IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7330 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANTOKBEN SAMJIBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7330 of 1995

MR GAURANG H BHATT for Petitioner No. 1

MS MANISHA LAVKUMAR, A.G.P for Respondent No. 1-2

MR DD VYAS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/04/2005

ORAL JUDGEMENT

1. By filing this petition, the petitioner has

challenged the order passed by the Collector, Bhavnagar dated 7th January, 1995, which is at Annexure-C of the compilation. The Collector has set aside Resolution No. 162 passed under Section 258 of the Gujarat Municipalities Act. It seems that the Municipality by passing various Resolutions transferred various pieces of land in favour of certain persons. The said Resolutions were set aside by the Collector under Section 258 of the Municipalities Act. In this petition, we are concerned with Resolution No. 162 by which the husband of the petitioner was permitted to purchase a piece of land, which he was occupying as a tenant. The Collector found that the said Resolution is contrary to law and is contrary to Section 65(2) of the Municipalities Act, 1963. The Collector therefore ordered that status-quo ante may be restored by setting aside the aforesaid resolution.

2. Learned advocate Shri Bhatt appearing for the petitioner has submitted that the husband of the petitioner was a tenant of the aforestated piece of land admeasuring 91 sq yards and he was occupying the said land as a tenant since last 20 years. He has submitted that when the land was purchased, appropriate market price was fixed before granting permission to the husband of the petitioner. It has been also submitted by learned advocate Shri Bhatt that the petitioner's husband was not heard by the Collector before passing the impugned order. It has been submitted that the petitioner's husband died on 12th September, 1984, as against that, the impugned order is passed in 1985 and that the order is passed against a dead person. The said averment is made in paragraphs 6 & 7 of the petition. He has also placed on record a copy of the death certificate of the husband of the petitioner stating that the petitioner's husband died on 12th September, 1984.

3. It is not in dispute that the order was passed without hearing the petitioner's deceased husband and after his death no intimation is given by the petitioner to the Collector about death of the said person. It is an admitted fact that at the time when the order was passed, the husband of the petitioner was no more.

4. Considering the aforestated aspect and since the order was passed against a dead person, the matter is now required to be sent back to the Collector for passing a fresh order.

5. The petition is accordingly partly allowed on this limited ground. As indicated above, the matter is

sent back for the Collector to decide the matter afresh and after hearing the petitioner, appropriate order may be passed by the Collector. The petitioner shall remain present before the Collector so that she can be heard. It is clarified that the matter has not been heard on merits and this Court has not expressed its opinion as the matter is sent back to the Collector for fresh decision.

6. It is for the Collector to consider whether the land in question can be granted to the petitioner by fixing appropriate price prevailing at the relevant time as per law.

7. The petition is partly allowed to the aforestated extent. Rule is made absolute. Interim relief granted earlier stands vacated.

8. The writ of this order shall be sent to the Collector forthwith for appropriate action as indicated in the order.

(P.B. MAJMUDAR, J.)
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